

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

COMMONWEALTH EDISON'S AND EXELON'S RESPONSE TO GRESS AND BROOKS PLAINTIFFS' MOTION FOR APPOINTMENT OF CO-LEAD COUNSEL

Defendants Commonwealth Edison Company (“ComEd”) and Exelon Corporation (“Exelon”), by and through their attorneys, respond to the Gress and Brooks Plaintiffs’ Motion for Entry of Pre-Trial Order Appointing Interim Co-Lead Counsel, Liaison Counsel, and Executive Committee Members. (Dkt. 32.)

1. Various plaintiffs have filed four separate, but related, complaints against ComEd and Exelon, among others, arising from the same common nucleus of alleged facts and alleging overlapping violations of federal and Illinois state law. In addition to this action (20 CV 04405), later filed cases are now pending before Judge Sharon Johnson Coleman (*Brooks et al. v ComEd et al.*, 20 CV 04555), Judge Sara L. Ellis (*Potter et al. v. ComEd et al.*, 20 CV 04675), and Judge Martha M. Pacold (*South Branch et al. v. ComEd et al.*, 20 CV 04980).

2. Plaintiffs in this action – *Gress* – have filed motions to reassign the *Brooks* and *Potter* cases to this Court as matters related to the *Gress* case. (Dkt. 20 and 22.) ComEd and Exelon have filed a statement in support of relating and reassigning those cases. (Dkt. 26.) Similarly, ComEd also has recently filed a motion requesting this Court deem the fourth of these cases (*South Branch*, 20 CV 04980) related to *Gress* and recommend to the Executive

Committee that this additional case also be reassigned. (Dkt. 39.) The claims in the *South Branch* case closely track the claims in *Gress*, as well as the claims in *Brooks* and *Potter*, with the claims in each case arising out of a common nucleus of alleged facts and common questions of law. The interests of judicial efficiency will be served by having a single judge assigned as soon as practicable to preside over all four proceedings, which in turn will help to ensure an orderly schedule, and to avoid duplicative and wasteful motion practice.

3. As concerns the *Gress* and *Brooks* plaintiffs' motion to appoint interim co-lead counsel pursuant to Fed. R. Civ. P. 23(g) (Dkt. 32), ComEd and Exelon support and endorse plaintiffs' request that lead class counsel be determined, so the various plaintiffs' groups can coordinate appropriately on scheduling and the filing of a consolidated amended complaint. Each of these steps will materially advance the interests of judicial efficiency and lead to an orderly set of proceedings before this Court. ComEd and Exelon take no position, however, on the question of *which* counsel should be appointed as lead counsel in this series of class actions.

4. Additionally, ComEd and Exelon also support the initial schedule proposed by the *Gress* and *Brooks* plaintiffs for filing a consolidated complaint and for ComEd and Exelon to respond to that complaint – namely, thirty days after the filing of a consolidated complaint. (See Proposed Order: Pre-Trial Case Schedule, attached to email from M. Leonard to Chambers, dated 9/16/20 at 10:50 pm.) ComEd and Exelon have filed an agreed motion to extend the current date for responding to the complaints in the *Gress* and *Brooks* cases from October 1, 2020, to either (i) thirty days after the filing of a consolidated complaint, or (ii) the date a response is due in either of the *Potter* or *South Branch* cases if they are not consolidated with the *Gress* and *Brooks* cases, whichever date is earlier.

5. Counsel for ComEd and Exelon will be in attendance at the status hearing set for October 6, 2020, and will be prepared to address questions the Court may have about their positions on any of the motions filed to date in this matter.

Dated: September 29, 2020

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Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Terrence J. Truax, an attorney, certify that I caused copies of the foregoing
COMMONWEALTH EDISON'S AND EXELON'S RESPONSE TO GRESS AND
BROOKS PLAINTIFFS' MOTION FOR APPOINTMENT OF CO-LEAD COUNSEL to
be served on all counsel of record via the Court's electronic filing system.

/s/ Terrence J. Truax
Counsel for Defendants Commonwealth Edison
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